

Pension Benefit Guaranty Corporation

§ 4042.3

Subpart D—Closeout of Sufficient Plans

§ 4041A.41 General rule.

If a plan's assets, excluding any claim of the plan for unpaid withdrawal liability, are sufficient to satisfy all obligations for nonforfeitable benefits provided under the plan, the plan sponsor may close out the plan in accordance with this subpart by distributing plan assets in full satisfaction of all nonforfeitable benefits under the plan.

§ 4041A.42 Method of distribution.

The plan sponsor shall distribute plan assets by purchasing from an insurer contracts to provide all benefits required by § 4041A.43 to be provided in annuity form and by paying in a lump sum (or other alternative elected by the participant) all other benefits.

§ 4041A.43 Benefit forms.

(a) *General rule.* Except as provided in paragraph (b) of this section, the sponsor of a plan that is closed out shall provide for the payment of any benefit attributable to employer contributions only in the form of an annuity.

(b) *Exceptions.* The plan sponsor may pay a benefit attributable to employer contributions in a form other than an annuity if:

(1) The present value of the participant's entire nonforfeitable benefit, determined using the interest assumption under §§ 4044.41 through 4044.57, does not exceed \$5,000.

(2) The payment is for death benefits provided under the plan.

(3) The participant elects an alternative form of distribution under paragraph (c) of this section.

(c) *Alternative forms of distribution.* The plan sponsor may allow participants to elect alternative forms of distribution in accordance with this paragraph. When a form of distribution is offered as an alternative to the normal form, the plan sponsor shall notify each participant, in writing, of the form and estimated amount of the participant's normal form of distribution. The notification shall also describe any risks attendant to the alternative

form. Participants' elections of alternative forms shall be in writing.

[61 FR 34052, July 1, 1996, as amended at 63 FR 38306, July 16, 1998]

§ 4041A.44 Cessation of withdrawal liability.

The obligation of an employer to make payments of initial withdrawal liability and mass withdrawal liability shall cease on the date on which the plan's assets are distributed in full satisfaction of all nonforfeitable benefits provided by the plan.

PART 4042—SINGLE-EMPLOYER PLAN TERMINATION INITIATED BY PBGC

Subpart A—General Provisions

Sec.

4042.1 Purpose and scope.

4042.2 Definitions.

4042.3 Issuance rules.

Subpart B [Reserved]

Subpart C—Disclosure

4042.4 Disclosure of information by plan administrator or plan sponsor.

4042.5 Disclosure of administrative record by PBGC.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1342.

SOURCE: 73 FR 68338, Nov. 18, 2008, unless otherwise noted.

Subpart A—General Provisions

§ 4042.1 Purpose and scope.

This part sets forth rules and procedures relating to single-employer plan terminations initiated by PBGC under section 4042 of ERISA.

§ 4042.2 Definitions.

The following terms used in this part are defined in § 4001.2 of this chapter: *Affected party*, *ERISA*, *PBGC*, and *plan administrator*.

§ 4042.3 Issuance rules.

PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. PBGC applies the rules in subpart C of part 4000 of this chapter

§ 4042.4

29 CFR Ch. XL (7–1–15 Edition)

to determine the date that an issuance under this part was provided.

Subpart B [Reserved]

Subpart C—Disclosure

§ 4042.4 Disclosure of information by plan administrator or plan sponsor.

(a) *Request for Information*—(1) *In general*. Beginning on the third business day (as defined in § 4000.22 of this chapter) after PBGC has issued a notice under section 4042 of ERISA that a plan should be terminated, an affected party may make a request to the plan sponsor or the plan administrator (or both) for any information that such plan administrator or plan sponsor has submitted to PBGC in connection with the plan termination.

(2) *Requirements*. A request under paragraph (a) of this section must:

(i) Be in writing to the plan administrator or plan sponsor;

(ii) State the name of the plan and that the request is for information submitted to PBGC in connection with the plan termination;

(iii) State the name of the person making the request for information and such person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under § 4001.2 of this chapter; and

(iv) Be signed by the person making the request.

(b) *Response by Plan Administrator or Plan Sponsor*—(1) *Timing of response*. A plan administrator or plan sponsor that receives a request under paragraph (a) of this section must provide the information requested not later than the 15th business day (as defined in § 4000.22 of this chapter) after receipt of the request.

(2) *Supplemental responses*. If, at any time after receipt of a request under paragraph (a), the plan administrator or plan sponsor submits additional information to PBGC in connection with the plan termination, the plan administrator or plan sponsor must provide such additional information to any affected party that has made a request under paragraph (a), not later than the 15th business day (as defined in § 4000.22

of this chapter) after the information is submitted to PBGC.

(3) *Confidential information*. (i) In responding to a request under paragraph (a) of this section, the plan administrator or plan sponsor shall not provide information that may, directly or indirectly, identify an individual participant or beneficiary.

(ii) A plan administrator or plan sponsor that has received a request under paragraph (a) of this section may seek a court order under which confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree, to ensure the confidentiality of such information, and

(B) Will not be disclosed to other affected parties.

(4) *Reasonable fees*. Under section 4042(c)(3)(D)(ii) of ERISA, a plan administrator or plan sponsor may charge a reasonable fee for any information provided under this section in other than electronic form.

§ 4042.5 Disclosure of administrative record by PBGC.

(a) *Request for Administrative Record*—

(1) *In general*. Beginning on the third business day (as defined in § 4000.22 of this chapter) after PBGC has issued a notice under section 4042 of ERISA that a plan should be terminated, an affected party with respect to the plan may make a request to PBGC for the administrative record of PBGC's determination that the plan should be terminated.

(2) *Requirements*. A request under paragraph (a) of this section must:

(i) Be in writing;

(ii) State the name of the plan and that the request is for the administrative record with respect to a notice issued by PBGC under section 4042 of ERISA that a plan should be terminated;

(iii) State the name of the person making the request, the person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under § 4001.2 of this chapter; and

(iv) Be signed by the person making the request.

(3) A request under paragraph (a) of this section must be sent to PBGC's Disclosure Officer at the address provided on PBGC's Web site. To expedite processing, the request should be prominently identified as an "Administrative Record Request."

(b) *PBGC Response to Request for Administrative Record*—(1) *Notification of plan administrator and plan sponsor.* Upon receipt of a request under paragraph (a) of this section, PBGC will promptly notify the plan administrator and plan sponsor that it has received a request for the administrative record, and the date by which PBGC will provide the information to the affected party that made the request.

(2) *Confidential information.* (i) In responding to a request under paragraph (a) of this section, PBGC will not disclose any portions of the administrative record that are prohibited from disclosure under the Privacy Act, 5 U.S.C. 552a.

(ii) A plan administrator or plan sponsor that has received notification pursuant to paragraph (b)(1) of this section may seek a court order under which those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree to ensure the confidentiality of such information, and

(B) Will not be disclosed to other affected parties.

(iii) If, before the 15th business day (as defined in § 4000.22 of this chapter) after PBGC has received a request under paragraph (a), PBGC receives a court order as described in paragraph (b)(2)(ii) of this section, PBGC will disclose those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code, only as provided in the order.

(3) *Timing of response.* PBGC will send the administrative record to the affected party that made the request not later than the 15th business day (as defined in § 4000.22 of this chapter) after it receives the request.

(4) *Form and manner.* PBGC will provide the administrative record using measures (including electronic measures) reasonably calculated to ensure actual receipt of the material by the intended recipient.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

Subpart A—General Provisions

Sec.

- 4043.1 Purpose and scope.
- 4043.2 Definitions.
- 4043.3 Requirement of notice.
- 4043.4 Waivers and extensions.
- 4043.5 How and where to file.
- 4043.6 Date of filing.
- 4043.7 Computation of time.
- 4043.8 Confidentiality.

Subpart B—Post-Event Notice of Reportable Events

- 4043.20 Post-Event filing obligation.
- 4043.21 Tax disqualification and title I non-compliance.
- 4043.22 Amendment decreasing benefits payable.
- 4043.23 Active participant reduction.
- 4043.24 Termination or partial termination.
- 4043.25 Failure to make required minimum funding payment.
- 4043.26 Inability to pay benefits when due.
- 4043.27 Distribution to a substantial owner.
- 4043.28 Plan merger, consolidation, or transfer.
- 4043.29 Change in contributing sponsor or controlled group.
- 4043.30 Liquidation.
- 4043.31 Extraordinary dividend or stock redemption.
- 4043.32 Transfer of benefit liabilities.
- 4043.33 Application for minimum funding waiver.
- 4043.34 Loan default.
- 4043.35 Bankruptcy or similar settlement.

Subpart C—Advance Notice of Reportable Events

- 4043.61 Advance reporting filing obligation.
- 4043.62 Change in contributing sponsor or controlled group.
- 4043.63 Liquidation.
- 4043.64 Extraordinary dividend or stock redemption.
- 4043.65 Transfer of benefit liabilities.
- 4043.66 Application for minimum funding waiver.
- 4043.67 Loan default.
- 4043.68 Bankruptcy or similar settlement.